

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

WHOLE FOODS MARKET SERVICES, INC.

and

(b) (6), (b) (7)(C)

**Cases 01-CA-263079; 01-CA-263108;
01-CA-264917; 01-CA-265183;
01-CA-266440; 01-CA-273840;
04-CA-262738; 04-CA-263142;
04-CA-264240; 04-CA-264841;
05-CA-264906; 05-CA-266403;
10-CA-264875; 19-CA-263263;
20-CA-264834; 25-CA-264904;
32-CA-263226; 32-CA-266442**

as Individuals

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT the charges filed by **(b) (6), (b) (7)(C)** in Cases 01-CA-263079 and 01-CA-266440, **(b) (6), (b) (7)(C)** in Case 01-CA-263108, **(b) (6), (b) (7)(C)** in Case 01-CA-264917, **(b) (6), (b) (7)(C)** in Case 01-CA-265183, **(b) (6), (b) (7)(C)** in Case 01-CA-273840, **(b) (6), (b) (7)(C)** in Case 04-CA-262738, **(b) (6), (b) (7)(C)** in Case 04-CA-263142, **(b) (6), (b) (7)(C)** in Case 04-CA-264240, **(b) (6), (b) (7)(C)** in Case 04-CA-264841, **(b) (6), (b) (7)(C)** in Case 05-CA-264906, **(b) (6), (b) (7)(C)** in Case 05-CA-266403, **(b) (6), (b) (7)(C)** in Case 10-CA-264875, **(b) (6), (b) (7)(C)** in Case 19-CA-263263, **(b) (6), (b) (7)(C)** in Case 20-CA-264834, **(b) (6), (b) (7)(C)** in Case 25-CA-264904, **(b) (6), (b) (7)(C)** in Case 32-CA-263226, and **(b) (6), (b) (7)(C)**

(b) (6), (b) (7)(C) in Case 32-CA-266442 against Whole Foods Market, Inc., herein referred to by its correct name, Whole Foods Market Services, Inc. (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 01-CA-263079 was filed by (b) (6), (b) (7)(C) on July 15, 2020, and a copy was served by regular mail on Respondent on July 16, 2020.

(b) The first-amended charge in Case 01-CA-263079 was filed by (b) (6), (b) (7)(C) on November 2, 2021, and a copy was served by regular mail on Respondent on December 2, 2021.

(c) The charge in Case 01-CA-263108 was filed by (b) (6), (b) (7)(C) on July 15, 2020, and a copy was served by regular mail on Respondent on July 16, 2020.

(d) The first-amended charge in Case 01-CA-263108 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 1, 2021, as corrected on November 5, 2021.

(e) The charge in Case 01-CA-264917 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.

(f) The first-amended charge in Case 01-CA-264917 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 2, 2021.

(g) The charge in Case 01-CA-265183 was filed by (b) (6), (b) (7)(C) on August 24,

2020, and a copy was served by regular mail on Respondent on August 26, 2020.

(h) The first-amended charge in Case 01-CA-265183 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 2, 2021.

(i) The charge in Case 01-CA-266440 was filed by (b) (6), (b) (7)(C) on September 22, 2020, and a copy was served by regular mail on Respondent on September 22, 2020.

(j) The first-amended charge in Case 01-CA-266440 was filed by (b) (6), (b) (7)(C) on November 2, 2021, and a copy was served by regular mail on Respondent on December 2, 2021.

(k) The charge in Case 01-CA-273840 was filed by (b) (6), (b) (7)(C) on March 9, 2021, and a copy was served by regular mail on Respondent on March 10, 2021.

(l) The first-amended charge in Case 01-CA-273840 was filed by (b) (6), (b) (7)(C) on May 20, 2021, and a copy was served by regular mail on Respondent on May 24, 2021.

(m) The second-amended charge in Case 01-CA-273840 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.

(n) The charge in Case 04-CA-262738 was filed by (b) (6), (b) (7)(C) on July 8, 2020, and a copy was served by regular mail on Respondent on July 9, 2020.

(o) The charge in Case 04-CA-263142 was filed by (b) (6), (b) (7)(C) on July 16, 2020, and a copy was served by regular mail on Respondent on July 17, 2020.

(p) The first-amended charge in Case 04-CA-263142 was filed by (b) (6), (b) (7)(C) on December 2, 2021, and a copy was served by regular mail on Respondent on December 2,

2021.

(q) The charge in Case 04-CA-264240 was filed by [REDACTED] on August 6, 2020, and a copy was served by regular mail on Respondent on August 7, 2020.

(r) The charge in Case 04-CA-264841 was filed by [REDACTED] on August 19, 2020, and a copy was served by regular mail on Respondent on August 19, 2020.

(s) The first-amended charge in Case 04-CA-264841 was filed by [REDACTED] on September 8, 2020, and a copy was served by regular mail on Respondent on September 8, 2020.

(t) The second-amended charge in Case 04-CA-264841 was filed by [REDACTED] on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.

(u) The charge in Case 05-CA-264906 was filed by [REDACTED] on August 12, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.

(v) The first-amended charge in Case 05-CA-264906 was filed by [REDACTED] on October 28, 2021, and a copy was served by regular mail on Respondent on November 5, 2021.

(w) The charge in Case 05-CA-266403 was filed by [REDACTED] on September 21, 2020, and a copy was served by regular mail on Respondent on September 22, 2020.

(x) The first-amended charge in 05-CA-266403 was filed by [REDACTED] on October 28, 2021, and a copy was served by regular mail on Respondent on November 5, 2021.

(y) The charge in Case 10-CA-264875 was filed by [REDACTED] on August 18,

2020, and a copy was served by regular mail on Respondent on August 19, 2020.

(z) The first-amended charge in Case 10-CA-264875 was filed by (b) (6), (b) (7)(C) on November 1, 2021, and a copy was served by regular mail on Respondent on November 1, 2021.

(aa) The charge in Case 19-CA-263263 was filed by (b) (6), (b) (7)(C) on July 17, 2020, and a copy was served by regular mail on Respondent on July 21, 2020.

(bb) The first-amended charge in Case 19-CA-263263 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.

(cc) The charge in Case 20-CA-264834 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 19, 2020.

(dd) The first-amended charge in Case 20-CA-264834 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.

(ee) The charge in Case 25-CA-264904 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.

(ff) The first-amended charge in Case 25-CA-264904 was filed by (b) (6), (b) (7)(C) on November 8, 2021, and a copy was served by regular mail on Respondent on November 9, 2021.

(gg) The charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on July 17, 2020, and a copy was served by regular mail on Respondent on July 20, 2020.

(hh) The first-amended charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on June 11, 2021, and a copy was served by regular mail on Respondent on June 11, 2021.

(ii) The second-amended charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.

(jj) The charge in Case 32-CA-266442 was filed by (b) (6), (b) (7)(C) on September 21, 2020, and a copy was served by regular mail on Respondent on September 21, 2020.

(kk) The first-amended charge in Case 32-CA-266442 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.

2. (a) At all material times, Respondent, a corporation with its headquarters located at 550 Bowie Street in Austin, Texas, has been engaged in the business of operating retail grocery stores at locations throughout the United States, including in Berkeley, California.

(b) During the calendar year ending December 31, 2020, in conducting its business operations described above in subparagraph 2(a), Respondent, derived gross revenues in excess of \$500,000.

(c) During the period of time described above in subparagraph 2(b), in conducting its business operations described above in subparagraph 2(a), Respondent purchased and received at its Berkeley, California store goods valued in excess of \$5,000 directly from outside the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

4. At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of

Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

At Respondent's Cambridge, Massachusetts store located on River Street (Cases 01-CA-263079, 01-CA-263108, 20-CA-266440, and 01-CA-273840):

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
	-	
	-	

At Respondent's Bedford, New Hampshire store (Case 01-CA-264917):

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
	-	

At Respondent's Cambridge, Massachusetts store located store located in Fresh Pond (Case 01-CA-265183):

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
	-	

At Respondent's Philadelphia, Pennsylvania store located on South Street (Cases 04-CA-262738, 04-CA-263142, and 04-CA-264240):

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
	-	
	-	
	-	
	-	
	-	
	-	

At Respondent's Marlton, New Jersey store (Case 04-CA-264841):

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
	-	
	-	

(b) (6), (b) (7)(C)

-

-

-

(b) (6), (b) (7)(C)

At Respondent's Glenn Allen, Virginia store (Case 05-CA-264906):

(b) (6), (b) (7)(C)

-

-

(b) (6), (b) (7)(C)

At Respondent's Columbia, Maryland store (Case 05-CA-266403):

(b) (6), (b) (7)(C)

-

(b) (6), (b) (7)(C)

At Respondent's Atlanta, Georgia store (Case 10-CA-264875):

(b) (6), (b) (7)(C)

-

-

(b) (6), (b) (7)(C)

At Respondent's Seattle, Washington store (Case 19-CA-2632630):

(b) (6), (b) (7)(C)

-

-

(b) (6), (b) (7)(C)

At Respondent's Petaluma, California store (Case 20-CA-264834):

(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

At Respondent's Mishawaka, Indiana store (Case 25-CA-264904):

(b) (6), (b) (7)(C)

-

(b) (6), (b) (7)(C)

At Respondent's Berkeley, California store (Cases 32-CA-263226 and 32-CA-266442):

(b) (6), (b) (7)(C)

-

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

-

-

-

(b) (6), (b) (7)(C)

5. On various occasions since about June 2020, employees of Respondent, at its stores located throughout the United States, engaged in concerted activities for the purposes of mutual aid and protection by raising concerns about working conditions, including by wearing Black Lives Matter messaging at work.

6. (a) Since at least the dates listed below, Respondent has maintained and enforced the following appearance rules at its stores located throughout the United States (collectively, the Appearance Rules).

(i) Since at least April 2020, the Face Mask Standard Operating Procedure (Face Mask SOP), which provides, in relevant part:

“[H]omemade or reusable cloth masks must adhere to [Respondent’s] dress code as outlined in the GIG; any mask or protective equipment must be without any visible slogan, message, logo or advertising;”

(ii) Since at least May 2020, the dress code policy in Respondent’s National General Information Guide (GIG Dress Code Policy), which provides, in relevant part:

....

Following are the basic, minimum guidelines for all Whole Foods Market retail stores. The Regional Policies section of this guide may contain additional guidelines. You should also refer to your store or team’s individual guidelines for additional requirements. Team Members who work in Whole Foods Market support facilities or offices should consult their location’s specific guidelines.

...

- You must wear Whole Foods Market shirts/tops (or those from the Whole Foods Market family, for example Allegro Coffee; vendors/suppliers; or industry related

organizations with which we are affiliated) or shirts/tops without any visible slogan, message, logo or advertising on them. Where required, only store hats may be worn. Hats from other companies, including Whole Foods Market vendors, are not permitted. Aprons will be provided to Team Members working in a department that requires an apron to be worn.

- No visible offensive tattoos.

Please refer to your region or location for additional requirements, including guidelines for shorts, jewelry/piercings, and team-specific requirements. Your local Health Department may have additional dress code requirements for Team Members working in food preparation; your Team Leader will let you know of any such requirements. Remember, the final determination on the acceptability of your appearance at work is up to the leadership of the location where you work;

...

(iii) Since at least November 7, 2020, Respondent's update to the Dress Code policy in its Look Book (Updated Dress Code), provides, in relevant part:

"This policy applies to "apparel", [sic] which is defined as anything worn by or decorating Team Members, including all clothing, shoes, gloves, accessories (including eyewear), jewelry, piercings, belts, hats, and head coverings or other items worn in the hair. Except for Company-provided [Employer] uniforms, Company Logo Shirts, and the Exceptions and Variations identified below, apparel worn by Team Members must be without any visible symbol, flag, slogan, message, logo or advertising.

...

Nothing in this Dress Code policy shall prohibit a Team Member who works on the sales floor or when encountering customers during their working time from wearing a union-affiliated pin, button, or insignia for the purpose of supporting or opposing a labor organization or otherwise legally protected activity, provided that it is no larger than the [Employer-]provided name badge, non-distracting and otherwise adheres to the Dress Code."

(b) At all material times since their promulgation, Respondent has maintained and enforced the Appearance Rules described above in subparagraph 6(a) at its stores located throughout the United States to restrict employees from engaging in concerted activities for their mutual aid and protection, including to prohibit them from wearing Black Lives Matter messaging.

(c) Respondent promulgated the November 7, 2020 Updated Dress Code described above in subparagraph 6(a)(iii) in response to its employees' protected concerted activities, including their Black Lives Matter messaging, and to discourage its employees from engaging in protected concerted activities.

7. On various occasions since June 2020, at stores located throughout the United States, by various supervisors and managers, Respondent enforced the Appearance Rules described above in subparagraph 6(a) to restrict employees from engaging in concerted activities for their mutual aid and protection by wearing Black Lives Matter messaging in the workplace, including, but not limited to, the incidents described below:

(a) At Respondent's Cambridge, Massachusetts store located on River Street (Cases 01-CA-263079, 01-CA-263108, 20-CA-266440, and 01-CA-273840):

(i) On various occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C), Charging Party (b) (6), (b) (7)(C), and other employees for refusing to remove their Black Lives Matter masks.

(iii) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks.

(iv) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C), Charging Party (b) (6), (b) (7)(C), and other employees for refusing to remove their Black Lives Matter masks.

(v) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C), Charging Party (b) (6), (b) (7)(C), Charging Party (b) (6), (b) (7)(C), and other employees for refusing to remove their Black Lives Matter masks.

(vi) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.

(vii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.

(viii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.

(ix) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.

(x) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a final written warning and Charging Party (b) (6), (b) (7)(C) a verbal warning due in part to their refusal to remove their Black Lives Matter masks and sent them home for refusing to remove their Black Lives Matter masks.

(xi) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a verbal warning due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask and sent (b) (6), (b) (7)(C) home for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(xii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(xiii) On several occasions in about (b) (6), (b) (7)(C) 2020, Respondent

issued Charging Party (b) (6), (b) (7)(C) verbal and written warnings for (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter Mask.

(xiv) About (b) (6), (b) (7)(C) 2020, issued Charging Party (b) (6), (b) (7)(C) a final written warning due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(b) At Respondent's Bedford, New Hampshire store (Case 01-CA-264917):

(i) On several occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), and other supervisors or managers instructed employees to remove Black Lives Matter masks, henna tattoos, and other messaging.

(ii) On an unknown date in about (b) (6), (b) (7)(C) 2020, Respondent sent home employee (b) (6), (b) (7)(C) and Charging Party (b) (6), (b) (7)(C) for refusing to remove Black Lives Matter masks and messaging.

(c) At Respondent's Cambridge, Massachusetts store located in Fresh Pond (Case 01-CA-265183):

(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) informed employees that they were not permitted to wear Black Lives Matter masks and would be sent home if they refused to remove them.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove Black Lives Matter masks.

(d) At Respondent's Philadelphia, Pennsylvania store located on South Street (Cases 04-CA-262738, 04-CA-263142, and 04-CA-264240):

(i) On various occasions in about (b) (6), (b) (7)(C) 2020 and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks, pins, necklaces, or buttons, and threatened to take unspecified reprisals against employees if they refused.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a verbal warning for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) verbal and written warnings for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

(e) At Respondent's Marlton, New Jersey store (Case 04-CA-264841):

(i) On various occasions in about (b) (6), (b) (7)(C) 2020 and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

instructed employees to remove their Black Lives Matter masks and informed them that they would be sent home and subject to termination if they failed to do so.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(f) At Respondent's Glenn Allen, Virginia store (Case 05-CA-264906):

(i) On various occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home if they refused to comply.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party

(b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(g) At Respondent's Columbia, Maryland store (Case 05-CA-266403):

(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) informed

employees that they were prohibited from wearing Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent constructively discharged

Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

(h) At Respondent's Atlanta, Georgia store (Case 10-CA-264875):

(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks, shirts, and other apparel.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party

(b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refused to remove (b) (6), (b) (7)(C) Black Lives Matter shirt.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent constructively discharged

Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

(i) At Respondent's Seattle, Washington store (Case 19-CA-263263):

(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home if they refused to remove them.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party

(b) (6), (b) (7)(C) and employees (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) and others for refusing to remove their Black Lives Matter masks.

(iii) About (b) (6), (b) (7)(C) Respondent issued a verbal counseling to Charging

Party (b) (6), (b) (7)(C), due to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(iv) About (b) (6), (b) (7)(C) 2020, Respondent issued a written warning to

Charging Party (b) (6), (b) (7)(C) due to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(v) About (b) (6), (b) (7)(C) 2020, Respondent issued a final written warning to

Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vi) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vii) In the alternative, Respondent constructively discharged Charging

Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

(j) At Respondent's Petaluma, California store (Case 20-CA-264834):

(i) On various occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home and face discipline for refusing to remove their Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a number of disciplinary actions for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(k) At Respondent's Mishawaka, Indiana store (Case 25-CA-264904), about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) informed employees that they were required to remove their Black Lives Matter masks.

(l) At Respondent's Berkeley, California store (Cases 32-CA-263226 and 32-CA-266442):

(i) On various occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home and face discipline for refusing to remove their Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C)

due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

(iv) In the alternative to subparagraph 7(l)(iii) above, Respondent constructively discharged Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

(v) About (b) (6), (b) (7)(C) 2020, Respondent issued discipline to Charging Party (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refused to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vi) About (b) (6), (b) (7)(C) 2020, Respondent issued a final written warning to Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(m) At Respondent's various facilities nationwide (all Cases), on dates unknown to Counsel for the General Counsel, Respondent's supervisors and agents sent home, disciplined, and fired other employees (whose identities are unknown to Counsel for General Counsel but are known to Respondent) because those employees engaged in the conduct described above in paragraph 5.

8. Respondent engaged in the conduct described above in subparagraphs 7(a) through 7(m) because employees engaged in the conduct described above in paragraph 5 and to discourage employees from engaging in this and other concerted activity.

9. By the conduct described above in paragraphs 7 and 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act

10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDIES

WHEREFORE, as the unfair labor practice violations alleged above occurred in various states and regions throughout the United States and involve rules that apply at all of Respondent's stores, and as it is highly likely that other employees who are presently unknown to the General Counsel but known to Respondent have been similarly harmed by the unfair labor practices alleged above and are entitled to a remedy, the General Counsel seeks an Order requiring Respondent to: (1) make all employees whole for all losses incurred as a result of Respondent's unlawful conduct, including reasonable consequential damages incurred as a result of Respondent's unlawful conduct; (2) rescind the rules found to be unlawful; (3) post in all of its Whole Foods stores throughout the United States any Notice to Employees that may issue in this proceeding; and (4) electronically post the Notice to Employees at all of its Whole Foods stores throughout the United States if it customarily uses electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with those employees. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before December 17, 2021.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number,

and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on March 1, 2022, at 9 a.m. in the Natalie P. Allen Courtroom (4th Floor), 901 Market Street, Suite 400, San Francisco, California, or by any method or means as ordered by the administrative law judge, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the

right to appear and present testimony regarding the allegations in this consolidated complaint.

The procedures to be followed at the hearing are described in the attached Form NLRB-4668.

The procedure to request a postponement of the hearing is described in the attached Form
NLRB-4338.

Dated: December 3, 2021



JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 01-CA-263079

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Whole Foods Market, Inc.
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(b) (6), (b) (7)(C)

Whole Foods Market, Inc.
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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.